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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 JEFFREY G. HESTON, CASE NO. 16cv912-WQH-AGS
11 Plaintiff, ORDER
12 v.
13 GB CAPITAL HOLDINGS, LLC.,
14 Defendant.

14 HAYES, Judge:

15 The matters before the court are the motions for relief from order filed by
16 Plaintiff Jeffrey G. Heston. (ECF No. 14 and 16).

17 **I. Background**

18 On April 15, 2016, Plaintiff Jeffrey G. Heston initiated this action by filing a
19 Complaint pursuant to the Court's admiralty and maritime jurisdiction to recover
20 possession of Plaintiff's vessel. (ECF No. 1). The Complaint alleges that Defendant
21 GB Capital Holdings, LLC unlawfully took Plaintiff's vessel from its mooring,
22 continued to exercise control over the vessel, and prevented Plaintiff from taking
23 possession of the vessel. On June 3, 2016, Defendant filed an answer. (ECF No. 4).

24 On July 1, 2016, Defendant filed the motion to compel arbitration. (ECF No. 6).
25 Plaintiff did not file a response to the motion to compel arbitration.

26 On August 23, 2016, the Court granted in part and denied in part Defendant's
27 motion to compel arbitration. (ECF No. 7). The Court applied the Maritime Contract
28 for Private Moorage ("the Contract") between Plaintiff and San Diego Mooring

1 Company (“SDMC”) containing provisions for arbitration and mediation. The Court
2 concluded that “based on the Contract and the representations made by Defendant, a
3 valid arbitration agreement exists and encompasses the dispute at issue.” *Id.* at 3-4.
4 The Court also noted that Plaintiff had not filed an opposition and “therefore ha[d] not
5 met his burden to show that the claims [were] unsuitable for arbitration.” *Id.* at 4. The
6 Court denied the portion of Defendant’s motion requesting that the Court compel
7 mediation because the Court concluded that there was no legal authority for a motion
8 to compel non-binding mediation. *Id.* The Court ordered that the parties were “directed
9 to proceed to arbitration in accordance with the terms of the arbitration agreement in the
10 Maritime Contract for Private Moorage.” *Id.* at 5.

11 Plaintiff filed a motion for relief from the Court’s Order from August 23, 2016
12 (ECF No. 7) pursuant to Federal Rule of Civil Procedure 60(b)(1)-(3). (ECF No. 9).
13 On December 15, 2016, this Court denied Plaintiff’s motion for relief from judgment.
14 (ECF No. 12). The Court concluded as follows:

15 The Court concludes that Plaintiff is not entitled to relief pursuant to Rule
16 60(b)(2) on the basis of newly discovered evidence, the Lease Agreement.
17 Plaintiff does not provide any legal authority to demonstrate that SDMC’s
18 alleged violation of the Lease Agreement with the Port District would void
19 his Contract with SDMC or that he has standing to challenge SDMC’s
20 compliance with the Lease Agreement. Plaintiff fails to show that this
21 newly discovered evidence “was of such magnitude that production of it
22 earlier would have been likely to change the disposition of the case.”
23 *Feature Realty*, 331 F.3d at 1093.

24 Plaintiff further contends that Defendant’s actions regarding the newly
25 discovered Lease Agreement constitutes fraud because Defendant failed
26 to offer evidence of the Port District’s approval of this language. (ECF
27 No. 9-1 at 6). Plaintiff contends that this entitles him to relief under Rule
28 60(b)(3). *Id.* Defendant contends that Plaintiff has no rights under the
Lease Agreement and has no standing to challenge the Defendant’s
compliance with its terms. (ECF No. 10 at 6). Defendant contends that
it has now submitted the Contract for approval and “no reason exists to
expect the Port District will not approve it.” *Id.* at 9.

Plaintiff does not demonstrate that Defendant’s alleged violation of the
contractual terms of the Lease Agreement with the Port District could
constitute fraud justifying relief under Rule 60(b)(3). The Court concludes
that Plaintiff fails to establish by clear and convincing evidence that
Defendant obtained a judgment by means of fraud and this “conduct
complained of prevented the [Plaintiff] from fully and fairly presenting the
case.” *See Lafarge Conseils Et Etudes, S.A.*, F.2d at 1337-38.

1 The Court concludes that Plaintiff has failed to carry his burden to
2 demonstrate that he is entitled to relief under Rule 60(b)(1)-(3).

3 (ECF No. 12 at 5-6).

4 Plaintiff moves the Court for relief from the December 15, 2016 order on the
5 grounds that the “Maritime Contract for Private Wharfage” is not cognizable in
6 admiralty, the Federal Arbitration Act does not apply, and Plaintiff has the right to a
7 trial over the validity of the Contract. Defendant opposes relief from the December 15,
8 2016 order. Defendant asserts that the Contract is obviously a maritime contract, that
9 the Court properly applied the Federal Arbitration Act, and that Plaintiff is not entitled
10 to a trial on his claim that the contractual provision requiring arbitration is not
11 enforceable. Defendant requests sanctions under the Court’s inherent authority based
12 upon Plaintiff’s bad faith and willful disobedience of the court order.

13 **III. Ruling of the Court**

14 Federal Rule of Civil Procedure 60(b) provides,

15 On a motion and just terms, the court may relieve a party or its legal
16 representative from a final judgment, order, or proceeding for . . . (1)
17 mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered
18 evidence that, with reasonable diligence, could not have been discovered
19 in time to move for a new trial under Rule 59(b); (3) fraud (whether
20 previously called intrinsic or extrinsic), misrepresentation, or misconduct
21 by an opposing party . . .


22 Fed. R. Civ. Proc. 60(b)(1)-(3).

23 In this case, the Court has fully considered and resolved all legal issues relevant
24 to the August 23, 2016 order (ECF No. 7) and the December 15, 2016 order (ECF No.
25 12). The Court finds that a valid arbitration exists and encompasses the dispute at issue.
26 The Court concludes that order compelling arbitration is authorized under the Federal
27 Arbitration Act, and that Plaintiff is not entitled to a trial on his claim that the
28 contractual provision requiring arbitration is not enforceable. There are no grounds for
relief from the August 23, 2016 order (ECF No. 7) or the December 15, 2016 order
(ECF No. 12).

Defendant’s request to award sanctions under its inherent authority is denied at
this stage in the proceedings without prejudice.

1 IT IS HEREBY ORDERED that the motions for relief filed by Plaintiff are
2 DENIED. (ECF No. 14 and 16).

3 DATED: January 5, 2018
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5 **WILLIAM Q. HAYES**
6 United States District Judge
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